

HOUSE JOURNAL

SEVENTY-SEVENTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

FORTIETH DAY — WEDNESDAY, MARCH 21, 2001

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 60).

Present — Mr. Speaker; Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Zbranek.

Absent, Excused — Hilbert.

Absent — Yarbrough.

The invocation was offered by Reverend Regan Miller, senior pastor, First Baptist Church, New Braunfels.

CAPITOL PHYSICIAN

The speaker recognized Representative Krusee who presented Dr. Stephen Benold of Georgetown as the "Doctor for the Day."

The house welcomed Dr. Benold and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

(Yarbrough now present)

HR 17 - ADOPTED (by Pitts)

Representative Pitts moved to suspend all necessary rules to take up and consider at this time **HR 17**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 17, In memory of the Honorable Frank Bobbitt McGregor.

HR 17 was read and was unanimously adopted by a rising vote.

On motion of Representative Uher, the names of all the members of the house were added to **HR 17** as signers thereof.

INTRODUCTION OF GUESTS

The speaker recognized Representative Pitts, who introduced the family of the Honorable Frank Bobbitt McGregor.

HR 563 - ADOPTED

(by Pitts)

Representative Pitts moved to suspend all necessary rules to take up and consider at this time **HR 563**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 563, Recognizing March 21, 2001, as Hillsboro Day at the State Capitol.

HR 563 was read and was adopted without objection.

HR 98 - ADOPTED

(by Green and Kuempel)

Representative Green moved to suspend all necessary rules to take up and consider at this time **HR 98**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 98, In memory of Texas State Trooper Randall W. Vetter.

HR 98 was read and was unanimously adopted by a rising vote.

On motion of Representative Kuempel, the names of all the members of the house were added to **HR 98** as signers thereof.

INTRODUCTION OF GUESTS

The speaker recognized Representative Kuempel, who introduced the family of Texas State Trooper Randall W. Vetter and colleagues from the Texas Department of Public Safety.

HR 558 - ADOPTED

(by Tillery)

Representatives Tillery and E. Reyna moved to suspend all necessary rules to take up and consider at this time **HR 558**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 558, Recognizing March 21, 2001, as Seagoville Day at the State Capitol.

HR 558 was read and was adopted without objection.

HR 344 - ADOPTED
(by Uher)

Representative Uher moved to suspend all necessary rules to take up and consider at this time **HR 344**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 344, In memory of J. Donald Bowen of Abilene.

HR 344 was read and was unanimously adopted by a rising vote.

On motion of Representative Counts, the names of all the members of the house were added to **HR 344** as signers thereof.

INTRODUCTION OF GUESTS

The speaker recognized Representative Uher, who introduced the family of J. Donald Bowen.

HR 406 - ADOPTED
(by Hawley)

Representative Hawley moved to suspend all necessary rules to take up and consider at this time **HR 406**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 406, Welcoming the visiting delegation from Glenlyon Primary School in Scotland to the State Capitol.

HR 406 was read and was adopted without objection.

INTRODUCTION OF GUESTS

The speaker recognized Representative Hawley, who introduced students and teachers from Glenlyon Primary School in Scotland.

HR 581 - ADOPTED
(by Gutierrez, Flores, Hinojosa, and Wise)

Representative Gutierrez moved to suspend all necessary rules to take up and consider at this time **HR 581**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 581, Welcoming the Border Blitz delegation to the State Capitol.

HR 581 was read and was adopted without objection.

HR 588 - ADOPTED
(by Capelo, Luna, and Seaman)

Representative Capelo moved to suspend all necessary rules to take up and consider at this time **HR 588**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 588, Recognizing the Honorable Joaquin Villarreal III of Robstown for his outstanding public service.

HR 588 was read and was adopted without objection.

INTRODUCTION OF GUESTS

The speaker recognized Representative Capelo, who introduced the Honorable Joaquin Villarreal III and his wife, Yolanda.

(Edwards in the chair)

HR 578 - ADOPTED
(by Goolsby)

Representative Goolsby moved to suspend all necessary rules to take up and consider at this time **HR 578**.

(Speaker in the chair)

The motion prevailed without objection.

The following resolution was laid before the house:

HR 578, Recognizing March 21, 2001, as Southwest Airlines Day at the State Capitol and commending the airline's employees.

HR 578 was read and was adopted without objection.

INTRODUCTION OF GUESTS

The speaker recognized Representative Goolsby, who introduced representatives from Southwest Airlines.

HR 432 - ADOPTED
(by Yarbrough)

Representative Yarbrough moved to suspend all necessary rules to take up and consider at this time **HR 432**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 432, Congratulating the Notable Trailblazers of Houston for their service to their community.

HR 432 was adopted without objection.

HR 561 - ADOPTED
(by Swinford)

Representative Swinford moved to suspend all necessary rules to take up and consider at this time **HR 561**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 561, Recognizing March 18-24, 2001, as National Agriculture Week in Texas.

HR 561 was read and was adopted without objection.

HR 591 - ADOPTED
(by J. Jones)

Representative J. Jones moved to suspend all necessary rules to take up and consider at this time **HR 591**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 591, Honoring Johnny W. Crawford of Oak Cliff for his years of service to the community.

HR 591 was adopted without objection.

REGULAR ORDER OF BUSINESS SUSPENDED

On motion of Representative Edwards and by unanimous consent, the reading and referral of bills was postponed until just prior to adjournment.

HB 3638 - PERMISSION TO INTRODUCE

Representative Haggerty requested permission to introduce and have placed on first reading **HB 3638**.

A record vote was requested.

Permission to introduce was granted by (Record 61): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C); Reyna, E.

Absent, Excused — Hilbert.

Absent — Eiland; George.

STATEMENT OF VOTE

When Record No. 61 was taken, I was in the house but away from my desk. I would have voted yes.

George

GENERAL STATE CALENDAR SENATE BILLS SECOND READING

The following bill was laid before the house and read second time:

SB 3 ON SECOND READING

(Hinojosa, Gallego, Thompson, McCall, and Hochberg - House Sponsors)

SB 3, A bill to be entitled An Act relating to establishing procedures for the preservation of evidence containing DNA and postconviction DNA testing.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Dunnam, Representative Hinojosa offered the following committee amendment to **SB 3**:

Amend **SB 3** (Senate Engrossment), in added Article 64.01, Code of Criminal Procedure, on page 3, between lines 14 and 15, by inserting the following:

(c) A convicted person is entitled to counsel during a proceeding under this chapter. If a convicted person informs the convicting court that the person wishes to submit a motion under this chapter, and if the court determines that the person is indigent, the court shall appoint counsel for the person. Compensation of counsel is provided in the same manner as is required by:

(1) Article 11.071 for the representation of a petitioner convicted of a capital felony; and

(2) Chapter 26 for the representation in a habeas corpus hearing of an indigent defendant convicted of a felony other than a capital felony.

Amendment No. 1 was adopted without objection.

Amendment No. 2 (Committee Amendment No. 2)

On behalf of Representative Dunnam, Representative Hinojosa offered the following committee amendment to **SB 3**:

Amend **SB 3** (Senate Engrossment), in added Article 64.03, Code of Criminal Procedure, as follows:

(1) On page 4, between lines 15 and 16, insert a new Subsection (b) as follows:

(b) A convicted person who pleaded guilty or nolo contendere in the case may submit a motion under this chapter, and the convicting court is prohibited from finding that identity was not an issue in the case solely on the basis of that plea.

- (2) On page 4, line 16, strike "(b)" and substitute "(c)".
- (3) On page 4, line 23, strike "(c)" and substitute "(d)".
- (4) On page 5, line 15, strike "(d)" and substitute "(e)".

Amendment No. 2 was adopted without objection.

Amendment No. 3 (Committee Amendment No. 3)

On behalf of Representative Kitchen, Representative Hinojosa offered the following committee amendment to **SB 3**:

Amend **SB 3** (Senate Engrossment), in added Article 64.05, Code of Criminal Procedure, on page 5, line 25, immediately after "Article" by adding "64.03 or".

Amendment No. 3 was adopted without objection.

Amendment No. 4 (Committee Amendment No. 4)

On behalf of Representative Keel, Representative Hinojosa offered the following committee amendment to **SB 3**:

Amend **SB 3** (Senate Engrossment), in added Article 64.05, Code of Criminal Procedure, on page 6, line 2, immediately after "appeals," by adding the following:

A convicted person may be released on bail pending a final determination of an appeal under this article in the same manner as a defendant appealing a conviction may be released on bail under Article 44.04, except that the provisions of Article 44.04(b) limiting the application of that article to certain defendants does not apply under this article.

Representative Hinojosa moved to table Amendment No. 4.

The motion to table prevailed.

Amendment No. 5

Representative Hinojosa offered the following amendment to **SB 3**:

Amend **SB 3** by adding an appropriately numbered SECTION to read as follows and by renumbering existing SECTIONS accordingly:

SECTION _____. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.47 to read as follows:

Art. 17.47. POST-TRIAL ACTIONS. A convicting court on entering a finding favorable to a convicted person under Article 64.04, or a convicting court or appellate court in any other case on entering a finding that supports a claim of innocence made by a convicted person, with the agreement of the attorney representing the state, may release the convicted person on bail under this chapter pending the conclusion of court proceedings or proceedings under Section 11, Article IV, Texas Constitution.

Amendment No. 5 was adopted without objection.

Vote Reconsidered - Amendment No. 5

Representative Hinojosa moved to reconsider the vote by which Amendment No. 5 was adopted.

The motion to reconsider prevailed.

Amendment No. 5 was withdrawn.

Amendment No. 6

Representative Dutton offered the following amendment to **SB 3**:

Amend **SB 3** by adding an appropriately numbered SECTION to read as follows and by renumbering existing SECTIONS accordingly:

SECTION _____. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.47 to read as follows:

Art. 17.47. POST-TRIAL ACTIONS. A convicting court on entering a finding favorable to a convicted person under Article 64.04 may release the convicted person on bail under this chapter pending the conclusion of court proceedings or proceedings under Section 11, Article IV, Texas Constitution.

Amendment No. 6 was adopted without objection.

Amendment No. 7

Representative Dutton offered the following amendment to **SB 3**:

Amend **SB 3** in SECTION 1 of the bill, in proposed Article 38.39(d), Code of Criminal Procedure (House Committee Report, page 2, lines 12 and 13) by striking "before the 91st day after notice of the planned destruction of the evidence is mailed." and substituting the following: before the 91st day after the later of the following dates:

(1) the date on which the attorney representing the state, clerk, or other officer receives proof that the defendant received notice of the planned destruction of evidence; or

(2) the date on which notice of the planned destruction of evidence is mailed to the last attorney of record for the defendant.

Amendment No. 7 was adopted without objection.

Amendment No. 8

Representative Dutton offered the following amendment to **SB 3**:

Amend **SB 3** in SECTION 2 of the bill, in proposed Article 64.01(b), Code of Criminal Procedure (House Committee Report, page 2, line 26 and page 3, line 1), by striking "and was in the possession of the state during the trial of the offense.".

Representative Hinojosa moved to table Amendment No. 8.

The motion to table prevailed.

Amendment No. 9

Representative Dutton offered the following amendment to **SB 3**:

Amend **SB 3** in SECTION 2 of the bill, in proposed Article 64.01(b), Code of Criminal Procedure (House Committee Report, page 3, lines 3-10), by striking Subdivision (1) and substituting the following:

"(1) was not previously subjected to DNA testing for any reason other than the refusal of the defendant to permit DNA testing; or".

(Sadler in the chair)

Representative Hinojosa moved to table Amendment No. 9.

The motion to table prevailed.

Amendment No. 10

Representative Dutton offered the following amendment to **SB 3**:

Amend **SB 3** in SECTION 2 of the bill, in proposed Article 64.03(a), Code of Criminal Procedure (House Committee Report, page 4, lines 8-15), by striking Subdivision (2) and substituting the following:

(2) the convicted person establishes by a preponderance of the evidence that the request for the proposed DNA testing is not made to unreasonably delay the execution of sentence or administration of justice.

Amendment No. 10 was adopted without objection.

Amendment No. 11

Representative Dutton offered the following amendment to **SB 3**:

Amend **SB 3** in SECTION 2 of the bill, in proposed Article 64.03(a)(2), Code of Criminal Procedure (House Committee Report, page 4, lines 10-12), by striking Paragraph (A) and substituting the following:

"(A) had exculpatory results been obtained through DNA testing before or at trial, the convicted person could have used those results to raise a reasonable doubt as to the person's guilt or to rebut a part of the prosecution's case; and".

Representative Hinojosa moved to table Amendment No. 11.

The motion to table was withdrawn.

Amendment No. 11 was withdrawn.

Amendment No. 12

Representative Dutton offered the following amendment to **SB 3**:

Amend **SB 3** by adding appropriately numbered SECTIONS to read as follows and by renumbering existing SECTIONS accordingly:

SECTION _____. Subchapter G, Chapter 411, Government Code, is amended by adding Section 411.1471 to read as follows:

Sec. 411.1471. DNA RECORDS OF PERSONS CHARGED WITH CERTAIN FELONIES. (a) This section applies to:

(1) a defendant arrested for an offense described by Section 411.148(a)(1); and

(2) a child taken into custody for conduct constituting an offense described by Section 411.148(a)(1).

(b) A law enforcement agency arresting a defendant for or taking a child into custody for an offense described by Subsection (a), on the request of an attorney representing the defendant or the child, must permit the defendant or child to provide one or more blood samples or other specimen for the purpose of creating a DNA record.

(c) The director by rule shall require law enforcement agencies taking a sample or specimen under this section to take the sample or specimen, preserve the sample or specimen, maintain a record of the collection of the sample or specimen, and send the sample or specimen to the director for scientific analysis under this subchapter in the same manner as is required of the Texas Department of Criminal Justice under Section 411.148.

(d) A defendant or child who provides a blood sample or other specimen under Subsection (b) is not liable for any costs incurred by the law enforcement agency under Subsection (c).

SECTION _____. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.020 to read as follows:

Art. 102.020. COSTS ON CONVICTION FOR OFFENSES REQUIRING DNA TESTING. (a) A person shall pay \$100 as a court cost on conviction of an offense described by Section 411.148(a)(1), Government Code.

(b) The court shall assess and make a reasonable effort to collect the cost due under this article whether or not any other court cost is assessed or collected.

(c) For purposes of this article, a person is considered to have been convicted if:

(1) a sentence is imposed; or

(2) the defendant receives community supervision or deferred adjudication.

(d) Court costs under this article are collected in the same manner as other fines or costs. An officer collecting the costs shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county treasury.

(e) The custodian of a county treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county may retain 10 percent of the funds collected under this article by an officer of the county as a collection fee if the custodian of the county treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the criminal justice planning account in the general revenue fund.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION _____. Article 102.056, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) The legislature shall determine and appropriate the necessary amount from the criminal justice planning account to the criminal justice division of the governor's office for grants to local law enforcement agencies performing duties imposed on those agencies under Sections 411.1471 and 411.1472, Government Code.

SECTION _____. The director of the Department of Public Safety, not later than January 1, 2002, shall adopt rules relating to duties imposed on law enforcement agencies under Section 411.1471, Government Code, as added by this Act.

SECTION _____. Section 411.1471, Government Code, as added by this Act, applies to a defendant arrested on or after February 1, 2002.

SECTION _____. (a) Article 102.020, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

Amendment No. 12 was adopted without objection.

(Speaker in the chair)

SB 3, as amended, was passed to third reading.

POSTPONED BUSINESS

The following bill was laid before the house as postponed business:

SB 331 ON SECOND READING

(Swinford, McReynolds, B. Turner, Cook, Hardcastle, et al. - House Sponsors)

SB 331, A bill to be entitled An Act relating to agricultural policy for the state.

SB 331 was considered in lieu of **HB 499**.

Amendment No. 1

Representatives Dunnam and Burnam offered the following amendment to **SB 331**:

Amend **SB 331** as follows:

(1) On page 1, line 15, replace subsection (3) with the following:

(3) state regulatory issues, by ensuring the efficiency and profitability of agricultural enterprises while at the same time protecting the health, safety, and welfare of agricultural workers and citizens of this state.

(2) On page 3, line 26, replace Section 2.003(b) with the following:

(b) For the purposes of Subsection (a)(11), an agricultural activity is presumed to be:

(1) reasonable and not a nuisance; and

(2) a good agricultural practice not adversely affecting public health and safety if the activity is undertaken in conformity with federal, state, and local laws and regulations.

Amendment No. 1 was adopted without objection.

SB 331, as amended, was passed to third reading.

HB 499 - LAID ON THE TABLE SUBJECT TO CALL

Representative Swinford moved to lay **HB 499** on the table subject to call.

The motion prevailed without objection.

**CONSTITUTIONAL AMENDMENTS CALENDAR
HOUSE JOINT RESOLUTIONS
SECOND READING**

The following resolution was laid before the house and read second time:

**HJR 1 ON SECOND READING
(by McCall, Bosse, Tillery, Chisum, and Gallego)**

HJR 1, A joint resolution proposing a constitutional amendment providing for a four-year term of office for the fire fighters' pension commissioner.

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for the remainder of today because of important state business:

Alexander on motion of R. Lewis.

Junell on motion of R. Lewis.

HJR 1-(consideration continued)

A record vote was requested.

HJR 1 was adopted by (Record 62): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Averitt; Bailey; Berman; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Alexander; Hilbert; Junell.

Absent — Bonnen; George.

STATEMENT OF VOTE

When Record No. 62 was taken, I was in the house but away from my desk. I would have voted yes.

George

**GENERAL STATE CALENDAR
HOUSE BILLS
THIRD READING**

The following bills were laid before the house and read third time:

**HB 5 ON THIRD READING
(by Dunnam, Hinojosa, Keel, Smith, Wise, et al.)**

HB 5, A bill to be entitled An Act relating to the deterrence of conduct involving the operation of a motor vehicle while under the influence of an alcoholic beverage; providing a penalty.

Amendment No. 1

Representatives Dutton and Keel offered the following amendment to **HB 5**:

Amend **HB 5** on third reading, at the end of proposed Section 49.031(b), Penal Code, by adding "Possession by a person of one or more open containers in a single criminal episode is a single offense."

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representatives Dutton, Keel, and Thompson offered the following amendment to **HB 5**:

Amend **HB 5** on third reading, in proposed Section 49.031, Penal Code, by adding a new Subsection (d), to read as follows, and redesignating Subsections (d) and (e) as Subsections (e) and (f):

(d) It is a defense to prosecution under Subsection (b) that:

(1) the person possessed the open container in connection with the person's collecting or transporting of recyclable materials for recycling purposes;

(2) the open container was inside a storage container used by the person to transport recyclable materials collected for recycling purposes, including a plastic bag; and

(3) the storage container was sealed or securely closed.

Amendment No. 2 was withdrawn.

Amendment No. 3

Representatives Nixon, Dunnam, and Keel offered the following amendment to **HB 5**:

Amend **HB 5**, on third reading, in SECTION 7 of the bill, in amended Section 521.344(b), Transportation Code, by striking Subdivision (2) and substituting the following:

(2) continues for a period set by the court of not less than 180 days or more than two years, except that if the person's license is suspended for

a second or subsequent offense under Section 49.08, Penal Code, committed within 10 years of the date on which the most recent preceding offense was committed, the suspension continues for a period set by the court of not less than one year or more than two years.

A record vote was requested.

Amendment No. 3 was adopted by (Record 63): 142 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Alexander; Hilbert; Junell.

Absent — Brown, B.; Edwards; George; Hope.

STATEMENTS OF VOTE

When Record No. 63 was taken, I was in the house but away from my desk. I would have voted yes.

George

When Record No. 63 was taken, my vote failed to register. I would have voted yes.

Hope

HB 5, as amended, was passed. (Ritter recorded voting yes; Uher, no)

HB 757 ON THIRD READING (by Coleman)

HB 757, A bill to be entitled An Act relating to the establishment of a task force to eliminate health and health access disparities in Texas.

HB 757 was passed. (Denny, Heflin, Hope, Shields, Talton, and Woolley recorded voting no)

HB 958 ON THIRD READING**(by Burnam)**

HB 958, A bill to be entitled An Act relating to the annexation of county roads.

HB 958 was passed.

HB 1086 ON THIRD READING**(by Solis, Swinford, Flores, and Coleman)**

HB 1086, A bill to be entitled An Act relating to a grant program to provide surplus agricultural products to organizations that serve needy or low-income individuals.

HB 1086 was passed.

HB 1110 ON THIRD READING**(by Hilbert)**

HB 1110, A bill to be entitled An Act relating to the North Harris County Regional Water Authority.

Amendment No. 1

Representative Counts offered the following amendment to **HB 1110**:

Amend **HB 1110**, on third reading, at the end of Section 4.01(b)(5), Chapter 1029, Acts of the 76th Legislature, Regular Session, 1999, as added by Amendment No. 3, by striking "as provided in Section 4" and inserting "as provided in Subsection (e) of this section".

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Counts offered the following amendment to **HB 1110**:

Amend **HB 1110**, on third reading, by striking SECTION 10 of the bill.

Amendment No. 2 was adopted without objection.

Amendment No. 3

Representatives Eiland and Gray offered the following amendment to **HB 1110**:

Amend **HB 1110** on third reading in SECTION 5 of the bill, in Section 4.08, Chapter 1029, Acts of the 76th Legislature, Regular Session, 1999, by adding Subsection (e) to read as follows:

(e) The authority may not exercise the power of eminent domain granted by Subsections (a) and (b) to acquire property of any kind in a county that:

(1) has a population of more than 245,000;

(2) borders the Gulf of Mexico; and

(3) is adjacent to a county with a population of more than 1.6 million.

Amendment No. 3 was adopted without objection.

A record vote was requested.

HB 1110, as amended, was passed by (Record 64): 146 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Alexander; Hilbert; Junell.

HB 1264 ON THIRD READING
(by Clark)

HB 1264, A bill to be entitled An Act relating to an exception to the presumption that all appropriate persons have given consent to a municipal annexation.

HB 1264 was passed.

HB 1402 ON THIRD READING
(by Cook)

HB 1402, A bill to be entitled An Act relating to authorizing the School Land Board to approve the release of the state's interest in land in certain circumstances.

HB 1402 was passed.

HB 1632 ON THIRD READING
(by P. King, et al.)

HB 1632, A bill to be entitled An Act relating to certain requirements in connection with suits for the termination of the parent-child relationship and the adoption of children.

HB 1632 was passed.

HB 1683 ON THIRD READING
(by Goolsby, McCall, Hodge, and Marchant)

HB 1683, A bill to be entitled An Act relating to the powers of certain transportation authorities and to the exercise of those powers.

HB 1683 was passed.

GENERAL STATE CALENDAR
HOUSE BILLS
SECOND READING

The following bills were laid before the house and read second time:

HB 1747 ON SECOND READING
(by McCall, Tillery, Bosse, Chisum, and Gallego)

HB 1747, A bill to be entitled An Act relating to the continuation and functions of the office of the fire fighters' pension commissioner and the membership of the board of trustees of the Texas statewide emergency services personnel retirement fund.

HB 1747 was passed to engrossment.

HB 1132 ON SECOND READING
(by Thompson)

HB 1132, A bill to be entitled An Act relating to guardianships and other related matters concerning incapacitated persons.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Deshotel, Representative Thompson offered the following committee amendment to **HB 1132**:

Amend **HB 1132** by adding the following appropriately numbered SECTIONS to the bill and renumbering the existing SECTIONS of the bill appropriately:

SECTION 21. Section 3.301, Family Code, is amended to read as follows:

Sec. 3.301. [~~INCAPACITATED;~~] MISSING, ABANDONED, OR SEPARATED SPOUSE. (a) A spouse may file a sworn petition stating the facts that make it desirable for the petitioning spouse to manage, control, and dispose of community property described or defined in the petition that would otherwise be subject to the sole or joint management, control, and disposition of the other spouse if:

(1) [~~because of physical or mental incapacity, the other spouse is unable to manage, control, or dispose of the community property subject to that spouse's sole or joint management, control, and disposition;~~

[(2)] the other spouse has disappeared and that spouse's location remains unknown to the petitioning spouse, unless the spouse is reported to be a prisoner of war or missing on public service;

(2) [(3)] the other spouse has permanently abandoned the petitioning spouse; or

(3) [(4)] the spouses are permanently separated.

(b) The petition may be filed in a court in the county in which the

petitioner resided at the time the [~~incapacity or~~] separation began, or the abandonment or disappearance occurred, not earlier than the 60th day after the date of the occurrence of the event. If both spouses are nonresidents of this state at the time the petition is filed, the petition may be filed in a court in a county in which any part of the described or defined community property is located.

SECTION 22. Section 3.307(b), Family Code, is amended to read as follows:

(b) On the motion of either spouse, the court shall amend or vacate the original order after notice and hearing if:

- (1) [~~the incapacitated spouse's capacity is restored;~~
~~(2)~~] the spouse who disappeared reappears;
- (2) [~~(3)~~] the abandonment or permanent separation ends; or
- (3) [~~(4)~~] the spouse who was reported to be a prisoner of war or missing on public service returns.

SECTION 23. Section 5.002, Family Code, is amended to read as follows:

Sec. 5.002. SALE OF SEPARATE HOMESTEAD AFTER [~~FOR INCAPACITATED~~] SPOUSE JUDICIALLY DECLARED INCAPACITATED. If the homestead is the separate property of a spouse and the other spouse has been judicially declared incapacitated by a court exercising original jurisdiction over guardianship and other matters under Chapter XIII, Texas Probate Code, the owner may sell, convey, or encumber the homestead without the joinder of the other spouse.

SECTION 24. Section 5.101, Family Code, is amended to read as follows:

Sec. 5.101. SALE OF SEPARATE HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES. If the homestead is the separate property of a spouse, that spouse may file a sworn petition that gives a description of the property, states the facts that make it desirable for the spouse to sell, convey, or encumber the homestead without the joinder of the other spouse, and alleges that the other spouse:

- (1) [~~is incapacitated, whether judicially declared incapacitated or not;~~
~~(2)~~] has disappeared and that the location of the spouse remains unknown to the petitioning spouse;
- (2) [~~(3)~~] has permanently abandoned the homestead and the petitioning spouse;
- (3) [~~(4)~~] has permanently abandoned the homestead and the spouses are permanently separated; or

(4) [~~(5)~~] has been reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States.

SECTION 25. Section 5.102, Family Code, is amended to read as follows:

Sec. 5.102. SALE OF COMMUNITY HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES. If the homestead is the community property of the spouses, one spouse may file a sworn petition that gives a description of the property, states the facts that make it desirable for the petitioning spouse to sell, convey, or encumber the homestead without the joinder of the other spouse, and alleges that the other spouse:

- (1) [~~is incapacitated, whether judicially declared incapacitated or not;~~
~~(2)~~] has disappeared and that the location of the spouse remains unknown to the petitioning spouse;

(2) [(3)] has permanently abandoned the homestead and the petitioning spouse;

(3) [(4)] has permanently abandoned the homestead and the spouses are permanently separated; or

(4) [(5)] has been reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States.

SECTION 26. Section 5.103, Family Code, is amended to read as follows:

Sec. 5.103. TIME FOR FILING PETITION. The petitioning spouse may file the petition in a court of the county in which any portion of the property is located not earlier than the 60th day after the date of the occurrence of an event described by Sections 5.101(1)-(3) [~~5.101(1)-(4)~~] and 5.102(1)-(3) [~~5.102(1)-(4)~~] or not less than six months after the date the other spouse had been reported to be a prisoner of war or missing on public service.

SECTION 27. Section 5.107, Family Code, is redesignated as Section 5.003, Family Code, and amended to read as follows:

Sec. 5.003 [~~5.107~~]. SALE OF COMMUNITY HOMESTEAD AFTER [FOR] SPOUSE JUDICIALLY DECLARED INCAPACITATED. If the homestead is the community property of the spouses and one spouse has been judicially declared incapacitated by a court exercising original jurisdiction over guardianship and other matters under Chapter XIII, Texas Probate Code, the competent spouse may sell, convey, or encumber the homestead without the joinder of the other spouse.

SECTION 28. The change in law made by this Act to Sections 3.301, 3.307(b), 5.101, 5.102, and 5.103, Family Code, applies only to a proceeding in which an original petition is filed on or after the effective date of this Act. A proceeding in which the original petition was filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose.

Amendment No. 1 was adopted without objection.

HB 1132, as amended, was passed to engrossment.

CSHB 675 ON SECOND READING
(by Walker)

CSHB 675, A bill to be entitled An Act relating to the selection and training of certain officers of certain water districts.

CSHB 675 was passed to engrossment.

HB 198 ON SECOND READING
(by Averitt)

HB 198, A bill to be entitled An Act relating to the refund of certain consumer loan acquisition charges.

HB 198 was passed to engrossment.

HB 440 ON SECOND READING
(by Madden, Keel, Naishtat, and Kuempel)

HB 440, A bill to be entitled An Act relating to an uncontested election for a trustee of a library district.

HB 440 was passed to engrossment.

CSHB 519 ON SECOND READING
(by Gallego)

CSHB 519, A bill to be entitled An Act relating to the compensation to victims of family violence or sexual assault for relocation and housing rental expenses.

Amendment No. 1

Representative Gallego offered the following amendment to **CSHB 519**:

Amend **CSHB 519** on page 2 as follows:

(1) Strike line 11 and substitute the following:
violence or a victim of sexual assault who is assaulted in the victim's place of residence for relocation and housing rental

(2) Strike line 20 and substitute the following:
or a victim of sexual assault who is assaulted in the victim's place of residence may receive a onetime-only assistance payment in

Amendment No. 1 was adopted without objection.

CSHB 519, as amended, was passed to engrossment.

CSHB 992 ON SECOND READING
(by Hochberg)

CSHB 992, A bill to be entitled An Act relating to circumstances under which a publisher or manufacturer of textbooks must maintain or arrange for a textbook depository in this state.

CSHB 992 was passed to engrossment.

HB 1018 ON SECOND READING
(by Hardcastle, et al.)

HB 1018, A bill to be entitled An Act relating to the processing of certain applications submitted to the Texas State Board of Medical Examiners.

Amendment No. 1

Representative Longoria offered the following amendment to **HB 1018**:

Amend **HB 1018** as follows:

On page 1, line 10 (house committee printing), between "another state" and "and who", insert "or country".

Amendment No. 1 was adopted without objection.

HB 1018, as amended, was passed to engrossment.

HB 1370 ON SECOND READING
(by Pickett and Hawley)

HB 1370, A bill to be entitled An Act relating to the authority of certain public entities to borrow from the state infrastructure bank.

Representative Pickett moved to postpone consideration of **HB 1370** until 10 a.m. Monday, March 26.

The motion prevailed without objection.

HB 1467 ON SECOND READING
(by Maxey, Kitchen, and F. Brown)

HB 1467, A bill to be entitled An Act relating to the amount of tuition that a public junior college may set aside for Texas Public Education Grants.

HB 1467 was passed to engrossment.

HB 1506 ON SECOND READING
(by Yarbrough)

HB 1506, A bill to be entitled An Act relating to security costs required of a person who contests certain alcoholic beverage license applications.

HB 1506 was passed to engrossment.

CSHB 1569 ON SECOND READING
(by Yarbrough)

CSHB 1569, A bill to be entitled An Act relating to a firefighters' relief and retirement fund in certain municipalities.

Amendment No. 1

Representative P. King offered the following amendment to **CSHB 1569**:

Amend **CSHB 1569** by adding the following:

SECTION 1. APPLICABILITY. This Act applies to a municipal retirement system that has 500 or more active and retired firefighters and police officers other than:

- (1) a system organized under the Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes);
- (2) the Texas Municipal Retirement System; or
- (3) any retirement system established under any other law exclusively for firefighters, police officers, or firefighters and police officers.

SECTION 2. DEFINITIONS. In this Act:

- (1) "Contribution" means the money put into a retirement fund by the participating members of the fund.
- (2) "Firefighter" means an employee of the fire department of a municipality who is required to satisfy Section 419.032, Government Code, as a condition of employment.
- (3) "Member" means a firefighter, police officer, or any person who is retired from a fire or police department and who is receiving benefits as a retiree of a retirement system.
- (4) "Participating member" means a firefighter or police officer who is currently making contributions to a retirement fund.
- (5) "Participation rate" means the money put into a retirement system by a municipality for services rendered to the municipality by the participating members of the system.

(6) "Police officer" means an employee of the police department of a municipality who is required to be licensed by the Commission on Law Enforcement Officer Standards and Education under Chapter 1701, Occupations Code, as a condition of employment.

(7) "Qualified actuary" means an actuary who is either a fellow of the Society of Actuaries or a member of the American Academy of Actuaries.

(8) "Retiree" means any person who is retired from the fire department or police department of a municipality or who is a surviving spouse or surviving dependent of a retired fire or police department employee.

SECTION 3. ELECTION PROCEDURES. (a) In any municipal retirement system in which firefighters or police officers are combined with nonemergency response employees, other than a system excluded by Section 1 of this Act, the firefighters or police officers or the firefighters and police officers may petition the retirement board of the municipal retirement system to call an election of the participating members of the petitioning group to determine, by majority vote of the firefighters, police officers, or police officers and firefighters, whether to separate from the municipal retirement system and to create a retirement system under this Act.

(b) Any petition filed under this Act must be signed by at least 10 percent of the participating members of the fire department, the police department, or both departments if both are petitioning. The petition must be accompanied by an actuarial analysis showing the impact of the proposed separation on the existing system and the proposed system. A qualified actuary must perform the actuarial analysis. The petitioning group is responsible for the cost of the actuarial analysis.

(c) A municipal retirement board receiving a petition that meets the requirements of Subsection (b) of this section shall, not later than the 60th day after the date that the municipal retirement board receives the petition, call an election to be conducted by a certified public accounting firm.

(d) If a majority of the participating members of a group vote to separate from the existing system, an election shall be held not later than the 60th day after the date of the separation election to elect members of the board of trustees for the system created under this Act. The election held under this subsection shall be conducted by the same certified public accounting firm that conducted the separation election.

SECTION 4. COMPOSITION OF BOARD. (a) If a system created under this Act includes both firefighters and police officers, the initial retirement board must consist of:

- (1) one firefighter and one police officer elected for three-year terms;
- (2) one firefighter and one police officer elected for two-year terms;

and

(3) one retired firefighter and one retired police officer elected by the retired members of each of the respective groups for one-year terms.

(b) If the system created under this Act includes only firefighters or only police officers, the initial retirement board shall consist of:

- (1) two participating members elected for two-year terms;
- (2) two participating members elected for one-year terms; and
- (3) one retired member elected by the retired members of the group for a one-year term.

(c) After the initial terms of office expire under Subsection (a) or (b) of this section, each term shall be for two years, and any vacancy shall be filled for the unexpired term.

(d) The mayor or the mayor's designee from the city council of the municipality shall serve on a retirement board described by Subsection (a) or (b) of this section as an ex officio member.

SECTION 5. PRESERVATION OF SYSTEM. (a) Any retirement system separating from a municipal retirement system and creating a separate system under this Act is governed by the rules and regulations, procedures, benefits, and document of the municipal retirement system, to the extent that those standards are applicable and not in conflict with this Act, until the new retirement board adopts, through the process contained in this Act, new rules and regulations, procedures, benefits, and a document that are ratified by a majority vote of the participating members of the system and the governing body of the municipality, if applicable.

(b) All authority granted to the retirement board of the municipal retirement system shall be granted to the new board until a new document is adopted as provided by this Act.

SECTION 6. EXPENDITURE AUTHORITY OF RETIREMENT BOARD DURING SEPARATION. (a) A retirement board of trustees created under this Act has the authority to make expenditures from the existing fund to facilitate the separation and to prepare for the creation of the new system or for any cause that is an appropriate expenditure for a retirement board.

(b) All expenditures made under this section shall be debited against that portion of the fund that is transferred to the new system created under this Act.

(c) The new board may hire an executive director and staff, who may be participating members of the fund, for the administration of the fund, who:

- (1) are employees of the new board; and
- (2) serve at the will of the new board.

(d) The new board may rent, lease, or purchase office space and equipment.

SECTION 7. BASIC MODIFICATIONS. Any modification of the system that does not deal with benefits, eligibility, or contributions may be made only after:

- (1) the retirement board receives an actuarial report stating that the proposed modification will not have a significant impact on benefits, eligibility, contributions, or the soundness of the system; and
- (2) a majority vote of the retirement board.

SECTION 8. MODIFICATION OF BENEFITS AND ELIGIBILITY. (a) The board of trustees of a system created under this Act may:

- (1) change the benefits or eligibility requirements for benefits payable from the retirement system;
- (2) provide for reinstatement by a member of service credit previously forfeited; and
- (3) adopt or change other requirements for the payment of benefits, except as otherwise prohibited by this Act.

(b) Before a board of trustees chooses to adopt or change a benefit or requirement for the payment of benefits under this section, the proposed addition or change must be approved by:

(1) a qualified actuary selected by the board; and
(2) a majority vote of the participating members of the retirement system voting on the addition or change by secret ballot at an election held for that purpose at which at least 50 percent of all participating members of the retirement system vote.

(c) Except as provided by Subsection (d) of this section, if a board chooses to adopt an addition or change after it has been approved as provided by this section, the addition or change applies to all persons who are participating members of the retirement system on the effective date of the addition or change and all persons who become participating members during the time the addition or change remains in effect. The addition or change also may apply to:

(1) persons receiving monthly benefits; or
(2) former members of the fire or police department who meet an applicable length-of-service requirement for service retirement.

(d) An addition or change adopted under this section may not, without the member's written consent, deprive a member of the retirement system of a right to receive a vested benefit.

(e) The effective date of a change or addition adopted under this section is a date specified by the board of trustees that is not earlier than the date of adoption by the board. A change or addition may not be retroactive unless retroactive application is required to maintain a plan's tax qualification status.

SECTION 9. MODIFICATION OF PARTICIPATION RATE. The rate of participation by the municipality in the retirement system shall be fixed as of January 1, 2001, and any modification that requires a change in the rate of participation by the municipality must meet the requirements of Section 8 of this Act and be approved by the governing body of the municipality. This Act does not require the approval of the municipality except for an increase in the participation rate.

SECTION 10. FUND TRANSFER. (a) A qualified actuary, jointly approved by the predecessor system's retirement board of trustees and the board of trustees of a retirement system created under this Act, shall determine the amount of money to be transferred to a retirement system created under this Act.

(b) When the retirement board created under this Act is ready to have the money transferred into the system created by this Act, the board shall notify the predecessor board. If the two retirement boards are unable to agree on an actuary before the 45th day after the date of notification, the predecessor board's actuary as of the first day of the year in which the petition for separation was submitted shall be appointed to serve. If the predecessor board's actuary is appointed, after agreement could not be reached in the required time, the retirement board created under this Act may appoint an additional qualified actuary.

(c) The actuary or actuaries shall divide the fund so that both retirement systems are equally funded based on an actuarial basis.

(d) The two boards shall jointly set a schedule for the division. If a schedule cannot be agreed on, the division shall occur not later than the 180th day after the date the actuary or actuaries have been selected in accordance with this Act.

SECTION 11. SEPARATION COSTS. (a) All reasonable and prudent costs of the separation from an existing fund and of the creation of a retirement system under this Act that are approved in advance by both retirement boards shall be debited against the new system created under this Act.

(b) No expense of the separation is the responsibility of the municipality in which the new fund is created.

SECTION 12. TRUST FUND. Any fund created under this Act is a trust fund. It shall be administered by a board of trustees known as "The Board Of Trustees of the Firefighter's or Police Officer's Municipal Retirement System."

SECTION 13. RECOVERY OF WRONGLY OBTAINED FUNDS. The board of trustees may bring a civil action against any offending party or may initiate a claim with the board's bond surety to recover any money paid out of or obtained from the fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication. The board of trustees may institute, conduct, and maintain the action in the name of the board of trustees for the use and benefit of the fund.

SECTION 14. HEARING AUTHORITY. A retirement board created under this Act may, through its presiding officer, subpoena witnesses and documents, administer oaths, examine witnesses, and require testimony in any matter affecting the retirement system or benefits, eligibility, participation, procedures, or contributions.

SECTION 15. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

Representative Yarbrough raised a point of order against further consideration of Amendment No. 1 under Rule 11, Section 2 of the House Rules on the grounds that it is not germane to the bill.

The speaker sustained the point of order.

CSHB 1569 was passed to engrossment.

HB 1621 ON SECOND READING (by Coleman)

HB 1621, A bill to be entitled An Act relating to the representation of the transportation disadvantaged in mass transportation.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Ehrhardt, Representative Coleman offered the following committee amendment to **HB 1621**:

Amend **HB 1621** to include the following definition of transportation disadvantaged: the elderly, persons with disabilities, and low-income individuals.

Amend **HB 1621** on page 1, Section 451.502, Transportation Code, by striking section (g) on lines 7-10 and replace with the following:

(g) The principal municipality shall make its appointments to the board so that at least one of the appointees is designated to represent the interests of the transportation disadvantaged.

Amend **HB 1621** on page 1, Section 451.5021, Transportation Code, by striking section (h) on lines 13-16 and replace with the following:

(h) The principal municipality shall make its appointments to the board so that at least one of the appointees is designated to represent the interests of the transportation disadvantaged.

Amend **HB 1621** on page 1, Section 452.562, Transportation Code, by striking section (f) on lines 19-22 and replace with the following:

(f) The principal municipality shall make its appointments to the board so that at least one of the appointees is designated to represent the interests of the transportation disadvantaged.

Amend **HB 1621** on page 2, Section 452.574, Transportation Code, by striking (c) on lines 1-4 and replace with the following:

(c) The principal municipality shall make its appointments to the board so that at least one of the appointees is designated to represent the interests of the transportation disadvantaged.

Amend **HB 1621** on page 2, Section 453.061 Transportation Disadvantaged, by striking lines 8-10 and replace with the following:
"consider the interest of the transportation disadvantaged in making decisions under this chapter."

Amend **HB 1621** on page 2, by striking (f) on lines 13-16 and replace with the following:

(f) The principal municipality shall make its appointments to the board so that at least one of the appointees is designated to represent the interests of the transportation disadvantaged.

Amendment No. 1 was adopted.

HB 1621, as amended, was passed to engrossment. (Denny, Heflin, and Howard recorded voting no)

HB 1634 ON SECOND READING

(by P. King)

HB 1634, A bill to be entitled An Act relating to certain payments allowed in an adoption case.

HB 1634 was passed to engrossment.

HB 1645 ON SECOND READING

(by Delisi)

HB 1645, A bill to be entitled An Act relating to an exemption for certain transfer students from the requirements of the Texas Academic Skills Program.

HB 1645 was passed to engrossment.

HB 1737 ON SECOND READING

(by Carter)

HB 1737, A bill to be entitled An Act relating to the location of cemeteries; amending Sections 711.008 and 711.033, Health and Safety Code.

HB 1737 was passed to engrossment.

CSHB 1753 ON SECOND READING
(by Gutierrez)

CSHB 1753, A bill to be entitled An Act relating to authorizing The University of Texas—Pan American to establish an upper-division extension campus in Rio Grande City and to enter into a partnership agreement with a junior college district for lower-division courses.

CSHB 1753 was passed to engrossment.

RESOLUTIONS CALENDAR

The chair laid before the house the following resolutions on committee report:

HCR 77 (by Madden, Swinford, Walker, Homer, Uher, et al.), Memorializing congress to revise certain provisions of Public Law 106-230.

HCR 77 was adopted without objection.

HCR 88 (by Oliveira), Requesting the International Boundary and Water Commission to assure that Mexico meet its delivery obligations under the 1944 treaty governing the sharing of waters from the Rio Grande/Rio Bravo basin.

HCR 88 was adopted.

HR 592 - ADOPTED
(by D. Jones)

Representative D. Jones moved to suspend all necessary rules to take up and consider at this time **HR 592**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 592, Honoring Marvin and Patricia Sanders of Ransom Canyon on the occasion of their 50th wedding anniversary.

HR 592 was adopted without objection.

On motion of Representative McCall, the names of all the members of the house were added to **HR 592** as signers thereof.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Appropriations, upon adjournment today, E1.030.

Urban Affairs, 2:45 p.m. instead of upon adjournment today, regular meeting room (E1.014), for a formal meeting, to consider posted bills.

Ways and Means, upon adjournment today, E2.010.

County Affairs, 2 p.m. today, regular meeting room, for a public hearing, to consider pending bills (continuation of this morning's meeting).

ADJOURNMENT

Representative Brimer moved that the house adjourn until 10 a.m. tomorrow.

The motion prevailed without objection.

The house accordingly, at 1:55 p.m., adjourned until 10 a.m. tomorrow.

ADDENDUM

REFERRED TO COMMITTEES

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

List No. 1

HB 3636 (By Geren), Relating to the validation of certain actions and proceedings and to the administration, powers, duties, operation, and financing of the Tarrant Regional Water District, a Water Control and Improvement District; providing a civil penalty; creating a criminal offense.

To Natural Resources.

HB 3637 (By Hilderbran), Relating to the County Court at Law of Burnet County.

To Judicial Affairs.

HR 582 (By Hardcastle), In memory of Alvin W. Shipman, an American hero who liberated prisoners at the Mauthausen German Prisoner of War Camp during World War II.

To Rules & Resolutions.

HR 583 (By Hardcastle), In memory of Dr. Samuel C. "Sam" Waters of Wichita Falls.

To Rules & Resolutions.

HR 585 (By Pitts), In memory of Lola Mae Peavy of Fort Worth.

To Rules & Resolutions.

HR 586 (By Pitts), Congratulating Charles Curry Pierce, Jr., of Dallas on his retirement.

To Rules & Resolutions.

HR 587 (By Pitts), Honoring Representative G. E. "Buddy" West and Shirley West of Odessa on the occasion of their 45th wedding anniversary.

To Rules & Resolutions.

SB 406 to Transportation.

SB 431 to Insurance.

SB 483 to Public Safety.

SB 524 to Public Education.

SB 591 to Business & Industry.

SB 783 to Juvenile Justice & Family Issues.

SB 826 to Public Education.

SB 925 to Transportation.

SB 1035 to Criminal Jurisprudence.

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Wednesday, March 21, 2001

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 178 Hunter SPONSOR: Bivins
Honoring supporters of the arts at the Texas Medal of Arts Awards on March 20, 2001.

HCR 194 Lewis, Ron SPONSOR: Ogden
In memory of Stella Mae Schroeder of Brenham.

HCR 220 Sadler SPONSOR: Staples
Designating March 19-20, 2001, as Panola County Days at the State Capitol.

SB 154 Truan
Relating to a requirement that information about anatomical gifts be included in the curriculum of certain driver education and driving safety courses.

SB 187 Shapleigh
Relating to the creation of an authority and project to provide government services through a secure and uniform online system.

SB 201 Carona
Relating to authorizing counties and municipalities to provide information and to enter into contracts for the payment of taxes, fees, or other charges through the Internet.

SB 210 Bivins
Relating to eligibility under the Early High School Graduation Scholarship program.

SB 390 Wentworth
Relating to an exemption from the requirements of the open meetings law for certain negotiations involving the Texas Lottery Commission.

SB 487 Ogden

Relating to bids for and awards of a state highway improvement contract.

SB 510 Armbrister

Relating to the procurement methods a political subdivision or a related entity may use.

SB 695 Wentworth

Relating to consultations between a governmental body and its attorney.

SB 738 Bivins

Relating to authorizing members of the governing body of municipalities to serve as volunteers.

SCR 41 Bivins

Commending and applauding all recipients and supporters of the Texas Medal of Arts Awards.

Respectfully,

Betty King

Secretary of the Senate

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

March 20

Business & Industry - **HB 472, HB 1192, HB 1205**

Higher Education - **HB 1545**

Insurance - **HB 1466, HB 1700, HB 1703, HB 1891, SB 414**

Judicial Affairs - **HB 177, HB 178, HB 587, HB 628, HB 923, HB 1037, HB 1041, HB 1117, HB 1233, HB 1287, HB 1394, HB 1765, HB 1979, HB 2096, HB 2111**

Land & Resource Management - **HB 681, HB 1811**

Natural Resources - **HB 1595, HB 1663, HB 2491, HB 2588**

Public Safety - **HB 335, HB 1122, HB 1563**

ENGROSSED

March 20 - HB 42, HB 251, HB 445, HB 753, HB 780, HB 822, HB 924, HB 987, HB 1166, HB 1265, HJR 47, HJR 53

SENT TO THE GOVERNOR

March 20 - HCR 136